

CALL FOR EVIDENCE FOR AN IMPACT ASSESSMENT

This document aims to inform the public and stakeholders on the Commission's future legislative work so they can provide feedback on the Commission's understanding of the problem and possible solutions, and give us any relevant information that they may have, including on possible impacts of the different options.

TITLE OF THE INITIATIVE	Safeguarding media freedom and pluralism in the internal market (Media Freedom Act)
LEAD DG (RESPONSIBLE UNIT)	CNECT I.1
LIKELY TYPE OF INITIATIVE	Legislative
INDICATIVE TIMETABLE	Q3 2022
ADDITIONAL INFORMATION	

This document is for information purposes only. It does not prejudge the final decision of the Commission on whether this initiative will be pursued or on its final content. All elements of the initiative described, including its timing, are subject to change.

A. Political context, problem definition and subsidiarity check

Political context

Eliminating the barriers to the establishment and operation of media services is essential for the completion of a genuine internal media market. The internal market freedoms go hand in hand with the protection of media freedom and pluralism, which are essential pillars of democratic systems based on the rule of law. In the 2021 State of the Union address, President von der Leyen stressed that media companies cannot be treated as any other businesses and that their independence must be protected at EU level.

In the [European Democracy Action Plan](#), the Commission proposed a set of measures to promote democratic participation, to fight disinformation and to support free and independent media. In this context, it adopted a [Recommendation](#) on the protection, safety and empowerment of journalists and is preparing an initiative to protect journalists and rights defenders from abusive litigation (SLAPP). The revised Audiovisual Media Services Directive ([AVMSD](#)) lays down rules for the independence of media regulators, promotes transparency of media ownership and recognises that editorial decisions should be free from interference. In the [Media and Audiovisual Action Plan](#), the Commission set out a series of actions to strengthen financial sustainability and digital transformation of the media sector.

In this context, the objective of this initiative, included in the [2022 Commission Work Programme](#), will be to establish a common framework for advancing the internal market in the media sector, thereby safeguarding media freedom and pluralism in that market. It will be coherent with the EU's efforts in nurturing, protecting and strengthening our democracy, which are at the heart of the Commission's priorities set out in President von der Leyen's [political guidelines](#).

Problem the initiative aims to tackle

The internal media market is affected by (i) different national rules on media pluralism, (ii) insufficient structures

<p>for cooperation between independent media regulators, (iii) instances of public and private interference in the ownership, management or operation of media outlets,¹ and (iv) lack of media pluralism safeguards, including online.</p> <p>In particular, media actors are confronted with different national substantive rules and scrutiny procedures over media market operations, and other restrictions related to market entry and operation. An insufficient level of transparency on media ownership and shortcomings in comparable audience measurement mechanisms may prevent media companies from making informed business decisions. Convergence in the internal media market is also impeded by diverging interpretation of regulatory concepts relevant for media pluralism. Moreover, market development is inhibited by insufficient structured cooperation mechanisms for media regulators as well as limited and fragmented incentives to foster media self-regulation. European media are also constrained by insufficient incentives to innovate and cooperate across borders, including through regulatory or financial tools.</p> <p>At the same time, instances of public and private interference weaken media independence. State resources may be used to put pressure on media, distorting competition in the internal market. Moreover, interference in editorial and management decisions of the media, which may lead to biased media coverage, among other issues, can affect investment or market entry decisions. Finally, online diffusion and amplification techniques may accentuate the problems, ultimately to the detriment of the diversity of the media offer.</p> <p>The problems outlined above have a direct impact on the functioning of the EU single market for media: they stem from and lead to regulatory fragmentation and deprive media market players of legal and market certainty.</p>
<p>Basis for EU action (legal basis and subsidiarity check)</p> <p>The initiative will be based on the competence to adopt measures for the approximation of the provisions laid down by law, regulation or administrative action in Member States, which have as their objective the establishment and functioning of the internal market under Article 114 of the Treaty on the Functioning of the European Union (TFEU).</p> <p>The initiative will build upon the revised AVMSD and will complement competition rules². It will be complementary to the Digital Services Act package³ and be fully aligned with the provisions of the Protocol on the system of public broadcasting in the Member States (the ‘Amsterdam Protocol’).</p>
<p>Practical need for EU action</p> <p>The initiative will only focus on the areas where EU action appears necessary for the proper functioning of the internal media market and for ensuring a level playing field and independent operation of media players across the EU.</p> <p>Neither the revised AVMSD nor EU competition rules can effectively address the problems outlined above, as such problems go beyond their scope or remit of application. Given the nature of the problems, in particular the regulatory fragmentation, only coordinated action at EU level can effectively remove obstacles faced by European media market players, especially those operating across borders, and provide further legal certainty.</p> <p>While Member States will continue enjoying flexibility to tailor their national media laws to their specificities, only common principles and reinforced cooperation in the areas identified will enable media market players to operate smoothly across borders in the EU internal market.</p>
<p>B. Objectives and policy options</p>

¹ As confirmed by the [2020](#) and [2021](#) Commission’s Rule of Law Reports as well as the recent editions of the Media Pluralism Monitor ([MPM](#)).

² EU competition rules, including the antitrust framework (Articles 101 and 102 of the TFEU and the Regulation on the control of concentrations between undertakings), State aid rules (Article 107 of the TFEU) as well as the specific provisions for Services of General Economic Interest (Article 106 of the TFEU), can contribute to media pluralism by fostering competition in media markets but do not have pluralism as an objective and are not the adequate tool for reaching the objective of the initiative.

³ The Proposal for a Regulation of the European Parliament and of the Council on a Single Market For Digital Services (Digital Services Act) and amending Directive 2000/31/EC and Proposal for a Regulation of the European Parliament and of the Council on contestable and fair markets in the digital sector (Digital Markets Act).

The key objectives of the initiative will be to:

- ensure that media companies can operate in the internal market subject to consistent regulatory standards, including as regards on media freedom and pluralism;
- ensure that EU citizens have access to a wide and varied media offer both offline and online;
- safeguard the editorial independence and independent management of the media, which is a precondition of media freedom and of the integrity of the internal market;
- foster undistorted competition between media companies by ensuring a transparent and fair allocation of state resources.

In **the baseline scenario**, the Commission would not propose any changes to the current legislative framework and would continue monitoring the national developments through the annual Rule of Law Reports, which will include as of 2022 concrete recommendations to the Member States.

The AVMSD would continue to be the only instrument of EU media law, with limited impact on the issues identified above. There would be no EU-level possibility to intervene in media market transactions to ensure media pluralism through the application of EU competition law.

Independent media regulators within the European Regulators Group for Audiovisual Media Services (ERGA) would continue to play a role in ensuring the enforcement of existing EU media rules, but without structured cooperation channels. ERGA would also have limited impact on further market convergence.

The other preliminary options to be explored are the following:

Option 1: Recommendation addressed to Member States

The recommendation would encourage Member States to implement a number of actions in relation to, among others, national scrutiny procedures over media market operations, restrictions to market entry and operation, media ownership transparency, protection of editorial independence and media diversity and transparent allocation of state resources.

The recommendation could envisage a monitoring mechanism for the Commission in order to encourage its application by the Member States. The existing ERGA could serve as a forum for exchange of best practices.

Option 2: Legislative instrument, underpinned by a reinforced EU network of independent media regulators

EU legislation would establish common principles for national scrutiny procedures of media market transactions and other restrictions to market entry and operation of the media. It would also envisage measures to enhance transparency of media markets.

EU legislation would also set out principles for the protection of editorial independence of the media and the transparent allocation of state resources in the media sector. It would also aim to foster consistent regulatory and self-regulatory standards relevant for media pluralism, offline and online.

It would aim to create an enabling framework for media companies to foster innovation and cooperation across borders, in view of contributing to the sector's financial independence and long-term sustainability.

The instrument would be underpinned by an effective and independent monitoring mechanism at the EU level and a structured cooperation framework for media regulators. It could build on the existing EU network of independent media regulators (ERGA), potentially reinforced with necessary powers and resources.

The design of the options above will be adjusted and further refined during the impact assessment process.

C. Likely impacts

1) Likely economic impacts

The initiative is expected to provide media companies with greater legal certainty, improved market access and economic growth opportunities, which are particularly important considering that the EU media sector is largely composed by SMEs. This would also provide greater incentives for media companies to invest across borders, given the reduced risks of obstructive national rules or procedures, as well as enhanced regulatory cooperation and convergence across the EU. The initiative would also help to improve the level playing field between all media actors.

2) Likely social impacts

Taking into consideration that the European media sector contributes to job creation and growth with a turnover exceeding 3% of GDP⁴, a strong internal market for media can bring further employment opportunities and facilitate social inclusion. The initiative is also likely to contribute to the media sector's development and at the same time help fulfil the media's societal role to inform citizens and enable them to shape their opinions. The initiative would also help the relevant regulatory authorities be more effective in safeguarding the special role of the media.

3) Likely impacts on fundamental rights

If adopted, the initiative would help to safeguard freedom of expression, as stipulated in Article 11 of the [EU Charter of Fundamental Rights](#). The initiative would also support the fundamental values of the EU stipulated in Article 2 of the [Treaty on European Union](#), given the role that independent media actors play in democratic systems based on the rule of law. It could have a positive impact on the freedom to conduct a business, in particular by limiting the risks of certain media players being subject to discriminatory treatment.

4) Likely impacts on simplification and/or administrative burden

All options could lead to some additional administrative burden on public authorities. However, such a burden would be counterbalanced by the significant reduction of the burden on market players resulting from streamlined procedures and lower risks of obstructive rules or administrative behaviour. Due to lower regulatory costs, the burden on media players would decrease and, at the same time, such players would benefit from a higher level of legal certainty.

5) Likely environmental impacts

No significant environmental impacts are expected. A limited negative impact could result from additional storage required for the increased electronic correspondence or the technical and organisational actions under option 2.

D. Better regulation instruments

Impact assessment

A detailed impact assessment will be conducted to deepen the problem analysis and assess policy options.

The impact assessment will rely on an evidence collection exercise covering different existing sources such as regular studies (e.g. the Media Pluralism Monitor) and reports from the Commission (Rule of Law reports), publications of international organisations, input from different stakeholders and review of academic literature.

In addition, the Commission has launched targeted, ad hoc studies to provide supplementary evidence. The studies will provide evidence on the initiative's potential economic and social impacts as well as its likely impacts on fundamental rights.

The completion of the impact assessment is planned for Q2 2022.

Consultation strategy

⁴ As mentioned in the Media and Audiovisual Action Plan, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52020DC0784>

<p>Feedback received in response to this Call for Evidence document will provide early evidence and stakeholder views on the possible policy options.</p> <p>The consultation strategy includes also an online public consultation to be launched in early January 2022.</p> <p>All stakeholders listed under the target audience will be invited to participate in the consultation. The questionnaire will be available in all EU languages, and replies may be also provided in all EU official languages.</p> <p>The Commission will also carry out a series of targeted consultation activities, including expert workshops (e.g. consultations with media experts and academics under the umbrella of ERGA Academy) as well as discussions with Member States in relevant fora, for instance in the Contact Committee established under the AVMSD.</p>
<p>Why we are consulting?</p>
<p>Through this consultation, we would like to gather:</p> <ol style="list-style-type: none"> 1) stakeholders' views on the current and emerging problems related to media freedom and pluralism, with a specific focus on obstacles/issues affecting the operation of the media in the EU internal market; 2) evidence and concrete data underpinning the problems identified, and 3) stakeholders' views on the potential policy approach, options and impacts.
<p>Target audience</p>
<p>The consultation will aim to collect views and insights from citizens, relevant Member States' authorities and bodies, academics, media actors (both private and public service media) and umbrella organisations representing any of the interested stakeholders.</p>